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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

August 4, 2003

Michael Powell, Chairman  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D. C. 20554

RE: WT Docket No. 03-128: FCC 03-125

Dear Chairman Powell:

On behalf of the Eastern Band of Cherokee Indians the Tribal Historic Preservation Office (EBCI/THPO) would like to address the consultation requirements outlined in the proposed Nationwide Programmatic Agreement (NWP) for the review of all communications undertakings, as required by Section 106 of the National Historic Preservation Act 36 CFR 800.

The EBCI/THPO appreciates the FCC's willingness to meet with tribal leaders at NCAI and USET leaders at various Indian conferences to discuss and address the draft NWP. In general the EBCI/THPO finds that the consultation efforts outlined are in keeping with the government-to-government relationship required to exist between the United States government and sovereign Indian Nations. Furthermore, although the initial NWP document left tribes out of project consultation, the FCC has resolved this oversight to the EBCI/THPO's satisfaction. That said, while we can agree on some of the language of the NWP we still find there to be several critical issues that need resolution prior to the finalization of the document.

The EBCI/THPO has reviewed the NWP for a second time, and unfortunately have found that many of our original concerns were not addressed in the latest draft of the NWP. First, while the EBCI supports the development of a nationwide communications infrastructure, we cannot condone the destruction of our heritage in the process of developing such a system and its requisite facilities. This document continues to undervalue our cultural, historical, religious, and sacred grounds which have great significance to us. To this end the EBCI/THPO recommends that FCC include Traditional Cultural Properties (TCP) and

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Religious/Sacred Sites throughout this document whenever the presence or study of historic properties or cultural resources is discussed.

Second the EBCI/THPO still has great discomfort with a number of projects proposed to be excluded for the Section 106 consultation process. The categorical of exclusion of collocations, for example, denies the fact that even minimal soil disturbance outside of a previously disturbed area (either horizontally or vertically) can damage importance and significance to tribes. Also, we would remind FCC that in some instances a previously disturbed site may still possess significance to a tribe, as some levels of significance are unrelated to the physical integrity of the space.

Third, the EBCI/THPO feels the most important aspect of this NHPA, is the assurance that the FCC and its applicants will consult with Indian Tribes whenever a Federal undertaking has the potential to affect properties of cultural and religious significance to a tribe. Recognizing the importance of consulting Tribes the new NHPA provides two alternatives in Part IV for consulting with tribes. The EBCI/THPO strongly recommends that the NHPA implements Alternative B. This alternative, proposed after coordination with USET and NCAI, provides a very straightforward yet thorough mechanism to assure adequate tribal consultation and direct and timely input. As Alternative A was developed by a working group without input by tribal entities, we find this alternative to establish a complicated process burdened with inconsistency and too little tribal input. Alternative B fully addresses the concerns of affected tribes regarding consultation and is the only alternative that meets both the letter and spirit of the NHPA (as amended). Furthermore, if it is indeed the goal of FCC to respect tribal sovereignty and acknowledge our cultural and religious/sacred sites, it is necessary to accept and implement Alternative B for this NHPA.

We appreciate the opportunity to provide comments about the NHPA and that you carefully review the EBCI/THPO's comments which are on the enclosed (in bold italic). If you have any questions about the information we have provided, please contact Lora Kay Oxendine-Taylor of our THPO staff at (828) 497-1588 or email her at [loratayl@nc-chokeee.com](mailto:loratayl@nc-chokeee.com).

Sincerely,

Leon D. Jones  
Principle Chief of the Eastern Band of Cherokee Indians